

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the Verizon Local and)	
Long Distance Telephone)	
Companies for Interim Waiver)	
with Regard to Certain Dominant)	
Carrier Regulations for In-Region,)	
Interexchange Services)	WC Docket No. 06-56
)	
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Petition of the Verizon Local and)	
Long Distance Telephone)	
Companies for Forbearance Under)	
47 U.S.C. § 160(c) with Regard)	
to Certain Dominant Carrier Regulations)	
for In-Region, Interexchange Services)	

REPLY COMMENTS OF VERIZON

Michael E. Glover
Of Counsel

Edward Shakin
Leslie V. Owsley
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3158

Attorneys for Verizon

May 1, 2006

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REPLY COMMENTS OF VERIZON¹

Only Sprint Nextel² and the New Jersey Ratepayer Advocate³ opposed the petitions filed by Verizon, and neither offered any valid reason why the petitions should be denied. As Verizon has shown, there is extensive and vigorous competition for both local and long distance services nationwide, especially in Verizon's local exchange carrier serving areas. Indeed, for all telecommunications services, Verizon's service areas are among the most competitive in the nation, and for the long distance services that are the focus of Verizon's petitions, competition is

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Sprint Nextel Corporation's Opposition to Petitions for Interim Waiver and Forbearance, WC Docket No. 06-56 (filed April 21, 2006) ("Sprint Nextel").

³ Comments of the New Jersey Division of the Ratepayer Advocate, WC Docket No. 06-56 (filed April 20, 2006) ("NJ Ratepayer Advocate").

intense nationwide. The Commission should, therefore, grant Verizon's petition for forbearance or, in the alternative, grant an interim waiver of the specified rules.

Sprint Nextel argues that the Commission should not forbear from or waive the particular rules specified in Verizon's petitions because "Congress and the Commission recognized that BOC market power makes safeguards necessary to protect consumers and the competitive market." Sprint Nextel at 4-5. Sprint Nextel grudgingly admits that the 1996 Telecommunications Act "allows for the eventual 'sunset' of certain section 272 requirements." *Id.* But it nevertheless argues that Congress understood that the section 272 requirements "would cause some inefficiencies" and implies that Congress intended them to apply unless the BOCs accept dominant regulation of their long distance operations. According to Sprint Nextel, Congress did nothing "to suggest . . . that dominant carrier status should not apply in-region even after sunset" and it "took no steps to lift structural separation requirements applicable to the former GTE companies." *Id.*

Sprint Nextel's argument is nonsensical. As Verizon has explained elsewhere, the three-year sunset of the section 272 separate affiliate requirement adopted by Congress, on its face, demonstrates that the requirement was a transitional measure that would be of limited duration.⁴ It is circular to point to the existence of the section 272 requirements *before* sunset as justification for continued requirements *after* the period Congress found sunset to be appropriate. Moreover, there is no reason that Congress would have expressed any opinion about the dominant carrier/non-dominant carrier construct or the regulations that classification as one or the other entails – that regulatory regime was developed by the Commission, and Congress did not bar the Commission from re-evaluating its application to the provision of long distance

⁴ Comments of Verizon, WC Docket No. 02-112, at 6 (filed Aug. 5, 2002).

service by the BOCs.⁵ Finally, Sprint Nextel is simply wrong that Congress “took no steps to lift the structural separation requirements applicable to the former GTE companies.” The 1996 Act eliminated the GTE Consent Decree altogether,⁶ thus allowing the Commission to determine the regulatory regime that should apply to GTE’s provision of long distance services.

Congress’ foresight in setting a limited period for the section 272 transitional requirements is confirmed by the explosion in competition that has occurred in the last decade. As Verizon demonstrated in its Memorandum of Points and Authorities,⁷ and as AT&T further showed,⁸ in the decade since enactment of the 1996 Act, the telecommunications market has undergone a fundamental revolution. Where end users once bought local service from their local phone company and long distance service from one of a number of interexchange carriers, they now can choose among a variety of all distance services offered by a wide range of intermodal providers. Because consumers increasingly view wireless, cable telephony, and VoIP as viable alternatives to wireline service, wireline access lines are now falling at approximately 5 percent annually, and analysts have recognized that Verizon’s region is attracting even greater levels of competition than the country as a whole.⁹ Average residential wireline toll minutes have also

⁵ See, e.g., *Regulatory Treatment of LEC Provision of Interexchange Services Originating the LEC’s Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756 (1997) (“LEC Classification Order”).

⁶ Telecommunications Act of 1996 § 601; see 47 U.S.C. § 152 note.

⁷ Memorandum of Points and Authorities in Support of Verizon’s Petitions for Interim Waiver or Forbearance, WC Docket No. 06-56, at 5-23 (filed February 28, 2006) (“Memorandum of Points and Authorities”).

⁸ Comments of AT&T, WC Docket No. 06-56, at 4-9 (filed Apr. 21, 2006).

⁹ See Todd Rosenbluth, TECH KNOWLEDGE, *Business Week Online* (Oct. 17, 2005) (Standard & Poor’s Equity Research Report showing that between June 2004 and June 2005, the BOCs lost 4.5 percent to 5.5 percent of their access lines to cable, wireless and, to a lesser extent, wholesale local service providers). See also Viktor Shvets, et al., Deutsche Bank, *2006 Preview: Out with the Old, In with the New* at 9 (Dec. 19, 2005) (“In 2005, Verizon continued to suffer the highest rate of loss (ending the year at an estimated rate of around 6.7%). We continue to

declined for the industry as a whole – from an average of 149 minutes per month in 1997, down to only 71 minutes per month in 2003 (and undoubtedly much less today, given the increase in wireless and decrease in wirelines).¹⁰ Contrary to Sprint Nextel’s claim that only a few customers have substituted wireless service for wireline,¹¹ the Commission’s own data show that wireless lines outnumbered wireline voice lines by the end of 2004.¹² And the Yankee Group has estimated that “wireless personal calling exceeded that of wireline” in 2005.¹³ Indeed, as Verizon showed in its Memorandum of Points and Authorities,¹⁴ consumer surveys reveal that wireless service has displaced 64 percent of long distance and 42 percent of local calling from landlines in households with wireless phones.¹⁵ Moreover, the wireless carriers’ all-distance plans, beginning in 1999 and 2000, led to massive displacement away from landline long distance calls and reversed what had been a steady increase in wireline long distance minutes.

believe that this is primarily caused by its ‘cutting edge’ exposure to aggressive cable telephony deployments by CVC and Time Warner”); Jason Armstrong, *et al.*, Goldman Sachs, *Preview in Pictures (PiP) – 4Q2005, Americas Telecom Services* at 2 (Jan. 2006) (“Access line erosion continues to worsen, on average 40 bp worse than last quarter, we estimate. We expect 6.8% line loss from VZ, 130 bp worse than any other RBOC.”).

¹⁰ See Indus. Anal. & Tech. Div., FCC, *Trends in Telephone Service*, Table 14.2 (Apr. 2005) available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf (includes: IntraLATA-Intrastate, InterLATA-Intrastate, IntraLATA-Interstate, InterLATA-Interstate, International, Others (toll-free minutes billed to residential customers, 900 minutes, and minutes for calls that could not be classified)).

¹¹ Sprint Nextel at 7.

¹² See Indus. Anal. & Tech. Div., FCC, *Local Telephone Competition: Status as of December 31, 2004* (rel. July 8, 2005), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0705.pdf.

¹³ Yankee Group Report, *Personal Wireless Calling Surpasses Wireline Calling: A Wireless Substitution Update* at 9 (Aug. 2005).

¹⁴ Memorandum of Points and Authorities at 10-18.

¹⁵ Kate Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 & Exhibit 3 (Dec. 2005).

“Thanks to unlimited night and weekend minutes . . . cellphone plans are the method of choice when it comes to long distance calling from home.”¹⁶

The fact that many consumers now use their wireless phones for the majority of their long distance calling shows not only that there is competition for long distance services, but also that customers are readily able to bypass wireline local exchange carriers for their long distance calls. As a result, there is no plausible basis for treating BOC long distance services – and only BOC long distance services – as somehow dominant.

Sprint Nextel also asserts that VoIP and cable telephony are not significant competitive alternatives to Verizon’s long distance services,¹⁷ but these claims are likewise belied by the facts on the ground. As Verizon showed, by the end of 2003, cable companies offered circuit-switched voice telephone service to more than 15 percent of homes nationwide; by the end of 2005, they offered telephony services (VoIP or switched) to at least 51 percent of U.S. households. The figure is expected to increase to 95 percent by the end of 2007.¹⁸ There has been rapid growth in the number of cable telephony subscribers. According to FCC survey data, as of January 2004, approximately 13 percent of customers that were offered cable telephony were subscribing to the service.¹⁹ Some cable operators report that, in some areas, their

¹⁶ W. Mossberg, *The Mossberg Solution: Turning Your Home Phone into A Cellphone – Call-Forwarding Devices Let You Use Cellular Service on a Traditional Phone*, WALL ST. J., Dec. 3, 2003 at D6.

¹⁷ Sprint Nextel at 7-8.

¹⁸ Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Growth Still Accelerating* at Exhibit 12 (Apr. 18, 2006).

¹⁹ See Report on Cable Industry Prices, *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, 20 FCC Rcd 2718, ¶ 37 & Table 10 (2005).

telephony services have been purchased by as much as 20-40 percent of their cable subscribers.²⁰ And growth is accelerating. Since Verizon filed its petitions, for example, Comcast reported that, in the first quarter of 2006, it added 211,000 new Comcast Digital Voice customers -- more than the company added in all of 2005. Comcast now markets its phone service to 19 million homes, and expects to be marketing to 32 million homes by year end.²¹ Collectively, cable companies are expected to serve more than nine million lines by the end of 2006 and more than 13 million by year-end 2007.²² Analysts expect that cable companies will achieve an overall penetration rate of 15-20 percent within the next five years.²³

²⁰ See, e.g., Chris Bowick, SVP Engineering & CTO, Cox Communications, *Cox Communications: Distribution at Its Best*, presentation at the Bear Stearns 17th Annual Media, Entertainment & Information Conference at 19 (Mar. 8, 2004); *Q1 2004 Cox Communications Inc. Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 042904as.714 (Apr. 29, 2004) (Pat Esser, Cox executive vice president & COO); Cox Communications, *News Releases: Cox Brings Telephone to Five New Markets in '05* (Mar. 8, 2005) (“In some communities, such as Omaha, Neb. and Orange County, Calif., 40 percent of consumers subscribe to Cox Digital Telephone”), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=683077&>.

²¹ See *Comcast Reports First Quarter 2006 Results*, http://media.corporate-ir.net/media_files/irol/11/118591/Earnings_1Q06/1q06pr.pdf (April 27, 2006).

²² Jeffrey Halpern, et al., Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Growth Still Accelerating* at Exhibit 13 (Apr. 18, 2006).

²³ See, e.g., Douglas S. Shapiro, et al., Banc of America Securities Research Brief, *Battle for the Bundle: Mapping the Battlefield, Our First Report from the Front*, at 3 (June 14, 2005) (“Cable should have 19.8 million telephony subs by 2010, or 18% penetration of homes passed”); see also Frank G. Louthan IV & Ben Gordon, Raymond James Equity Research, *Reassessing the Impact of Access Lines on Wireline Carriers*, at 1 (July 11, 2005) (estimating that cable and standalone VoIP will reach over 20 percent of residential households by 2010); Jeffrey Halpern, et al., Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* at Exhibit 8 (Jan. 17, 2006) (“we expect all the Bells to see roughly the same level of line losses, approximately 20-22% by 2010”); Frank Governali, et al., Goldman Sachs, *Americas: Telecom Services* (Jan. 12, 2005).

In addition, any customer with broadband access – which is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC²⁴ – can obtain voice service from multiple independent VoIP providers. Vonage, for example, provides service to more than 1.5 million customers in the U.S. and completes more than 42 million calls each week.²⁵ And contrary to Sprint Nextel’s claim, customers do view VoIP service as a replacement for their telephone line. Approximately 60 to 70 percent of Vonage customers bring their old phone number with them when they sign up.²⁶

Sprint Nextel claims that the bundling of local and long distance “increases Verizon’s market power,” and argues that “[i]t is not within Verizon’s or the other BOCs’ authority to eliminate the distinction between local and long distance telecommunications services.”²⁷ This argument makes no sense. Even before the sunset of section 272, the Act recognized the benefit of offering bundles of services.²⁸ Today, the distinction between local and long distance services is evaporating as a result of marketplace dynamics. Wireless carriers and VoIP providers introduced all distance services (or bundles of local and long distance) to consumers who responded enthusiastically. Verizon offered its own bundles of local and long distance as a response to competition. As noted above, the wireless experience demonstrates that customers

²⁴ See, e.g., NCTA, *Industry Overview: Statistics & Resources*, <http://www.ncta.com/Docs/PageContent.cfm?pageID=86> (estimating 117.8 million homes passed by cable modem service in 2006, citing Morgan Stanley); Leichtman Research Group, Inc., Research Notes 1Q06 at 7 (Mar. 15, 2006) (estimating 107.5 million homes passed by cable modem service provided by the top 10 MSOs).

²⁵ Vonage, Form S-1A (SEC filed Apr. 28, 2006); Vonage, Fast Facts, http://www.vonage.com/corporate/about_fastfact.php.

²⁶ See Doug Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 30 (June 14, 2005).

²⁷ Sprint Nextel at 6, 14.

²⁸ 47 U.S.C. § 272(g) (providing for the joint marketing and sale of services).

can and do bypass wireline local exchange service to make long distance calls. That imposes competitive discipline on both standalone long distance services and bundles, and makes clear that Sprint Nextel's claim (at 3) that the BOCs have "market power" that somehow justifies the continued application of outmoded regulations is simply wrong.²⁹

Sprint Nextel asserts that BOCs could "misallocate costs between incumbent local exchange carriers . . . and long distance operations, . . . discriminate against competitors, . . . [and] provide subtle advantages to its long distance and wireless affiliates," and argues that "without the safeguards that Verizon wants removed . . . it will be practically impossible for the Commission to detect or deter . . . abuses in the future."³⁰ Sprint Nextel's speculations ignore the fact that, under forbearance or an interim waiver, section 272(e) will still require a BOC to provide telephone exchange and exchange access services to itself and nonaffiliates in the same time interval and to impute to itself an amount "no less than the amount charged to any unaffiliated interexchange carriers" for such services. 47 U.S.C. § 272(e)(1), (3).

²⁹ Sprint Nextel claims that the BOCs "have a poor record of complying with section 251, 271, and 272 requirements, merger conditions, and performance requirements, which underscores the need for continued long distance market protections." Sprint Nextel at 4-5. Sprint Nextel goes on to allege without citation or explanation that the BOCs have been assessed "fines, penalties, and compelled refunds of well over \$2 billion for market misconduct." *Id.*, at 5 and n.10. At least as far as Verizon is concerned, the Commission has already rejected Sprint Nextel's argument. Verizon has made payments under various performance assurance plans when its reported performance in a particular month did not meet the established standards. But in reviewing Verizon's performance, the Commission has determined time and again that these reported results were not "competitively significant." See, e.g., *Verizon Vermont 271 Order*, 17 FCC Rcd 7625, ¶¶ 41, 42, 54 (2002); *Verizon Maine 271 Order*, 17 FCC Rcd 11659, ¶¶ 39, 47, 49, 50 (2002); *Verizon New Jersey 271 Order*, 17 FCC Rcd 12275, ¶¶ 111, 141 (2002); *Verizon New Hampshire and Delaware 271 Order*, 17 FCC Rcd 18660, ¶¶ 109-111, 115 (2002); *Verizon Virginia 271 Order*, 17 FCC Rcd 21880, ¶¶ 43, 53 (2002); *Verizon Maryland, Washington, D.C., and West Virginia 271 Order*, 18 FCC Rcd 5212, n.6, n.59 (2003). With respect to consent decrees, the Commission has explained that "[t]he act of consenting to [a consent decree] is not a wrongful act and does not necessarily imply wrongful conduct." *Policy Regarding Character Qualifications in Broadcasting*, 102 FCC 2d 1179, at n.64 (1986).

³⁰ Sprint Nextel at 4, 14.

Moreover, with one exception, Sprint Nextel makes no effort to show that any of the regulations for which Verizon seeks forbearance or a waiver are necessary to protect consumers. The one exception is Sprint Nextel's focus on Verizon's request that long distance services provided on an integrated basis be treated as regulated for accounting purposes. Sprint Nextel claims that investment and expenses associated with long distance services would be allocated between state and interstate jurisdictions using the current frozen separation allocation factors.³¹ As Verizon explained in its Memorandum of Points and Authorities, however, Verizon will treat long distance revenues, investment, and expenses as regulated for accounting purposes but remove them from the separations process so that they are not assigned to either interstate or intrastate. The long distance revenues, investment, and expenses would, however, be tracked and would be available should a state, or the Commission, decide to look at them in the future.³²

The New Jersey Ratepayer Advocate seemingly acknowledges that it would be unfair to impose tariffing requirements on only a few competitors. It argues, however, that the "simple solution is to apply appropriate safeguards to all competitors whether intermodal or intramodal competitors."³³ This would be a giant step backwards. The Commission did away with tariffing requirements for long distance services in 1997.³⁴ Indeed, as Verizon explained in its Memorandum of Points and Authorities at 26-27, the Commission has determined that tariffing would be *contrary* to the public interest because it could harm competition. The Commission was concerned that tariff requirements might "stifle price competition and marketing

³¹ Sprint Nextel at 15-16; *see also* NJ Ratepayer Advocate at 7.

³² Memorandum of Points and Authorities at 32 n. 105.

³³ NJ Ratepayer Advocate at 5.

³⁴ *LEC Classification Order*; *see also* *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 20730 (1996).

innovation.”³⁵ According to the Commission, a requirement to file tariffs “would reduce incentives for competitive price discounting, constrain carriers’ ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking out or obtaining service arrangements specifically tailored to their needs.”³⁶

New Jersey Ratepayer Advocate also argues that price cap regulation “reduces the incentive to allocate improperly the costs of affiliates’ interLATA services.”³⁷ But as Verizon and AT&T explained, no interexchange toll service is subject to price cap regulation today.³⁸ Subjecting BOCs’ long distance services to price caps would amount to imposing a new requirement on a few competitors in an intensely competitive market. This makes no sense.

Both Sprint Nextel and the New Jersey Ratepayer Advocate claim that Verizon’s recent acquisition of MCI changes the long distance marketplace and justifies imposing these regulations on Verizon. Sprint Nextel, in particular, seeks to relitigate the Commission’s approval of Verizon’s acquisition of MCI. Sprint Nextel argues that Verizon’s acquisition of MCI “takes the second largest long distance and enterprise market competitor out of its market, while simultaneously eliminating one of the few significant alternatives to Verizon special access in its regions.”³⁹ The Commission has already rejected these arguments. For example, the Commission found that “Verizon’s acquisition of MCI is not likely to result in anticompetitive effects for mass market services because MCI significantly reduced marketing for local service,

³⁵ *LEC Classification Order*, ¶ 88.

³⁶ *Id.*

³⁷ NJ Ratepayer Advocate at 6.

³⁸ Memorandum of Points and Authorities at 28; AT&T at 12.

³⁹ Sprint Nextel at 7; *see also id.* at 10-11.

long distance service and bundled local and long distance service provided to the mass market.”⁴⁰ Moreover, the Commission concluded that “competition from intermodal competitors is growing quickly,” and the Commission “expect[s] it to become increasingly significant in the years to come.”⁴¹

With respect to enterprise customers, the Commission found that “a large number of carriers compete in this market . . . and that these multiple competitors ensure that there is sufficient competition.”⁴² And the Commission concluded that the presence of other competitors, together with the consent decree between Verizon and MCI, and the Department of Justice, ensured that the merger would not lead to anticompetitive effects on the provisioning and pricing of wholesale special access.⁴³ Sprint Nextel’s attempt to reopen the merger proceeding is inappropriate.

Finally, both Sprint Nextel and the New Jersey Ratepayer Advocate assert that the regulations for which Verizon seeks forbearance or a waiver are being addressed in other proceedings, and argue that the Commission should wait to address Verizon’s petitions until it has concluded the other proceedings.⁴⁴ But as the Commission is well aware, the pendency of other regulatory proceedings can not be a reason for denying a forbearance petition.⁴⁵

⁴⁰ *Verizon / MCI Merger Order*, 20 FCC Rcd 18433, ¶ 102 (2005).

⁴¹ *Id.*

⁴² *Verizon / MCI Merger Order* ¶ 74. *See also* AT&T Comments at 7-9.

⁴³ *Verizon / MCI Merger Order* ¶ 24, 32-35. *See also* AT&T Comments at 9, n. 22.

⁴⁴ Sprint Nextel at 2, 4, 17; NJ Ratepayer Advocate at 7. NJ Ratepayer Advocate additionally argues that the Commission should not grant Verizon’s petitions because Verizon has not yet decided whether it will re-integrate its long distance operations. *Id.* at 4. But the regulatory regime in which Verizon must operate affects its decision on how to structure its operations.

⁴⁵ *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001).

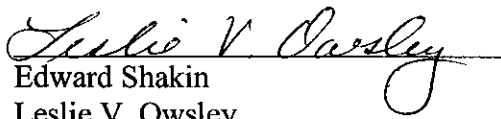
The Commission has long recognized that competition is the best form of “regulation”: “Competitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest. In addition, using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets.”⁴⁶ As Verizon explained, the Commission has already determined that the regulations for which Verizon seeks forbearance or waiver are affirmatively harmful to the public interest.⁴⁷ As a result, consumers will benefit from removing these outmoded and artificial regulatory handicaps.

* * * * *

For the foregoing reasons, the Commission should grant Verizon’s petitions for limited waiver or, in the alternative, for forbearance from the specified regulations.

Respectfully submitted,

Michael E. Glover
Of Counsel


Edward Shakin
Leslie V. Owsley
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3158

Attorneys for Verizon

May 1, 2006

⁴⁶ See, e.g., *Access Charge Reform*, 12 FCC Rcd 15982, ¶ 263 (1997).

⁴⁷ Memorandum of Points and Authorities at 23-24.

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of May, 2006, copies of the foregoing "Reply Comments" were sent by first class mail, postage prepaid, to the parties listed below.

_____/S/_____

Jennifer L. Hoh
703-351-3063

Richard H. Rubin
Gary L. Phillips
Paul K. Mancini
AT&T
1401 Eye Street, NW
Suite 400
Washington, DC 20005

Richard M. Sbaratta
Bennett L. Ross
1133 21st Street, NW
Suite 900
Washington, DC 20036

Seema M. Singh
Christopher J. White
New Jersey Division of the Ratepayer
Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07102

Vonya B. McCann
John E. Benedict
Sprint Nextel
401 Ninth Street, NW
Suite 400
Washington, DC 20004

- + By Facsimile and First Class Mail
- * By Electronic Mail and First Class Mail